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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

SERGIO LOUIS DIAZ,

Defendant and Appellant.

B218890

(Los Angeles County
Super. Ct. No. YA069491)

Appeal from a judgment of the Superior Court of Los Angeles County. Eric C. Taylor, Judge. Affirmed.

Cristina G. Lechman, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

An information filed April 7, 2008 charged Sergio Louis Diaz with three counts of premeditated attempted murder in violation of Penal Code sections 664 and 187, subdivision (a); one count of shooting at an occupied vehicle, in violation of Penal Code section 246; and three counts of assault with a firearm, in violation of Penal Code section 245, subdivision (a)(2). The information also alleged gang enhancements under Penal Code section 186.22, subdivisions (b)(1)(B) and (C) and gun use enhancements under Penal Code sections 12022.5, subdivision (a) and 12022.53, subdivision (c).

Diaz pleaded not guilty. After a defense expert concluded that Diaz was not competent to stand trial, a prosecution expert concluded that Diaz was competent. The court then appointed a third expert, who concluded that Diaz was competent. The court granted Diaz's motion to represent himself. Diaz filed numerous motions before requesting that counsel be appointed. The court appointed counsel to represent Diaz.

The evidence at trial included testimony from the driver and two passengers in a car, all three of whom testified to the events of the evening of September 6, 2007, when multiple shots were fired at the car as it drove down an alley. One passenger testified that Diaz was among those in a group in the alley, and that someone dressed like Diaz fired at the car. The second passenger testified that he saw Diaz shoot at the car. The driver testified that he saw Diaz walk behind his car and then saw the person behind the car fire shots at the car. All three identified Diaz in photographic lineups. None of the men called the police after the shooting.

A neighbor testified that he had seen a group of people in the alley that evening, and that he heard gunshots while he was on his way downstairs to break up a scuffle. The neighbor identified Diaz in a photographic lineup as one of the people who had been in the alley, and testified that he saw Diaz in the alley after the police had come and gone. A police officer testified that he photographed the area, and the photographs showed two holes in a garage several feet apart, and bullet fragments found inside the garage.

At trial, defense counsel successfully moved for a judgment of acquittal on the gang enhancements.

After deliberating for two days, the jury hung on the three counts of attempted, premeditated murder, convicted Diaz of three counts of assault with a firearm and one count of shooting at an occupied vehicle, and found true gun use enhancements under Penal Code section 12022.5 as to each assault. The prosecutor agreed not to retry the hung premeditated attempted murder counts, and dismissed them. The defense and prosecution reached a mutual recommended sentence of 16 years, which the trial court imposed. Diaz filed a timely notice of appeal.

We appointed counsel to represent Diaz on appeal. After examining the record, counsel filed an opening brief raising no issues and asking this court to review the record independently. On May 20, 2010, we advised Diaz he had 30 days in which to submit personally any contentions or issues he wished us to consider. To date, we have received no response.

We have examined the entire record, and we are satisfied that Diaz's counsel on appeal has fully complied with her responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The judgment is affirmed.

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JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.